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10/597,191

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EXAMINER

SMITH, JENNIFER A

ART UNIT

PAPER NUMBER

1793

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/597,191

**Applicant(s)**

WILSON ET AL.

**Examiner**

JENNIFER A. SMITH

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE-US)  
Paper No(s)/Mail Date 7/14/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Restrictions***

Restriction is required under 35 U.S.C. 121 and 372. This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I claim(s) 1-23, drawn to a method of decontaminating an article or room

Group II, claim(s) 24-38, drawn to an apparatus for decontaminating a porous article

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical feature which is referred to Annex B of Appendix A1 of the MPEP (Administrative Instructions under the PCT, "Unity of Invention"). Unity exists only when there is a technical relationship among the claimed inventions involving one or more of the same or corresponding claimed technical features. The express "special technical features" is defined as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art."(Rule 13.2).

In the instant case the common technical feature among the claimed inventions I-II is the decontamination of a material contaminated with a bioweapon. The question of unity of invention has been reconsidered retroactively by the examiner in view of the search performed; a review of Torregross et al. (US Patent No. 4,298,426), makes clear that the claimed species is not novel over the prior art (the instantly claimed decontamination apparatus). The reference discloses that the apparatus as claimed can be used to practice another and materially different process. In the instant case the decontamination apparatus as claimed can also be used in a process for treating and bleaching wood pulp or flour. The prior art reference teaches this in claim 41 and Figure 1 [Described in US Patent No. 4,298,426].

Furthermore, the reference appears to demonstrate that the claimed production method does not define a contribution with each of the inventions, considered as a whole, makes over the prior art. Accordingly, the prior art of the record supports restriction of the claimed subject matter into the groups as mentioned immediately above.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time

of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

### ***Joint Inventors***

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Telephonic Restriction***

A telephone call was made to Sheree Lyn Rybak on September 2, 2008 to request an oral election to the above restriction requirement.

### ***Status of Application***

Applicant's election, to prosecute the invention of Group III (claims 24-38) via telephone is acknowledged.

Claims 1-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claims 24-38 are presented for examination.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 07/14/2006 is in compliance with the provisions of 37 CFR 1.97 and has been considered by the examiner.

### ***Claim Objections***

Claim 27 is objected to because of the following informalities: The word "rotometer" in line 1 of the claim is incorrectly spelled. The correct spelling is **rotameter**. Appropriate correction is required to fix this error.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 24-26, 28, 31, 33, 34, and 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Nelson et al. (US Patent Publication No. 2004/0101438 A1).**

In regard to claim 24, Nelson et al. teaches an apparatus for sanitizing a food in Figure 1. The apparatus contains a storage tank (1), a chlorine dioxide source (3). Before introducing  $\text{ClO}_2$  gas, a little steam was fed into the tank to achieve over 85% relative humidity [See Paragraph 0031]. The vaporized  $\text{ClO}_2$  gas and air mixture inside the cylinder was circulated by a diaphragm vacuum pump [See Paragraph 0036].

In regard to claim 28, Nelson et al. teaches before injection of  $\text{ClO}_2$  gas, 90% relative humidity was achieved by flowing the air inside the cylinder (nitrogen) through water in a gas-washing bottle (humidifier) [See Paragraph 0036].

In regard to claim 33, Nelson et al. teaches the chlorine dioxide gas can be produced using any type of conventional chlorine dioxide gas generator, such as a CDG gas generator [See Paragraph 0014].

In regard to claim 34, Nelson et al. teaches a stainless steel tank [See Paragraph 0028].

In regard to claim 36, Nelson et al. teaches, in Figure 1, monitors for relative humidity (7).

In regard to claim 25, in Figure 2 Nelson et al. teaches the first fluid path (10), a second fluid path (14), and a third fluid path (16).

In regard to claim 26, Nelson et al. teaches a valve (flow regulator) V in Figure 2.

In regard to claim 31, Nelson et al. teaches a gas pump valve 2 (flow regulator) in Figure 2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.



**Claims 35, 37, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US Patent Publication No. 2004/0101438 A1).**

In regard to claim 35, the Nelson reference fails to teach a heat source. Nelson et al. discloses a temperature of container (1). A typical range of the reaction temperature is from 3-45°C.

One of skill in the art, at the time of Applicant's invention, would have been motivated to provide a heat source in the apparatus taught by Nelson et al. in order to maintain temperatures such as those disclosed, which are higher than room temperature.

In regard to claim 37, Nelson et al. teaches monitors for temperature, pressure, and relative humidity (7) in Figure 1.

In regard to claim 38, Nelson et al. teaches preparing a stainless steel test strips in an autoclave in Paragraph 0030. The strips are then placed in the decontamination chamber. One of skill in the art would recognize a more efficient operation process in which the autoclave and the reaction tank were the same things. Furthermore, an autoclave would increase the sterilization capabilities of the apparatus taught by Nelson et al.

**Claims 27, 29, 30, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US Patent Publication No. 2004/0101438 A1) in view of Szabo (US Patent No. 5,547,590).**

In regard to claims 27, 29, 30, and 32 the Nelson reference fails to explicitly teach the specific flow regulators (rotameter, fill valve, ventilation valve, etc.). Szabo et al. teaches the flow of gas and fluids in a decontamination apparatus [See Figure 1] controlled with a number of flow regulators.

One of skill in the art would recognize the benefit of providing fluid pressure and flow regulators like those disclosed by Szabo within the apparatus taught in the Nelson reference to maintain a steady fluid flow rate through the system [See Column 3, lines 5-7].

### ***Conclusion***

Claims 24-38 are rejected.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER A. SMITH whose telephone number is (571)270-3599. The examiner can normally be reached on Monday - Friday, 8:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on (571)272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J.A. LORENZO/  
Supervisory Patent Examiner, Art Unit 1793

Jennifer A. Smith  
November 13, 2008  
TC 1793

JS